

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RODNEY MCFARLAND,

Plaintiff,

-vs-

ROBERT A. KIRKPATRICK,

Defendant.

08-CV-00065 (MAT)
DECISION AND ORDER

I. Introduction

Petitioner Rodney McFarland ("petitioner") filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on January 24, 2008. Docket No. 1. The petition contained both exhausted and unexhausted claims, and was stayed pending exhaustion of petitioner's state judicial remedies. Docket No. 7. The Court learned earlier this year that the New York State Appellate Division had vacated petitioner's judgment of conviction and remitted the matter to the trial court for further proceedings on the indictment. Accordingly, on June 12, 2017, the Court issued an Order to Show Cause why the petition should not be dismissed as moot. Docket No. 47. Petitioner's state court counsel subsequently submitted a letter to the Court confirming that petitioner was no longer in custody pursuant to the judgment of a state court. Docket No. 51.

On August 16, 2017, Magistrate Judge Michael J. Roemer issued a Report and Recommendation ("R&R") (Docket No. 52) recommending that the petition be dismissed as moot. No objections to the R&R

were filed. As set forth below, the Court finds no error in Judge Roemer's R&R, and therefore adopts it in its entirety.

II. Discussion

When specific objections are made to a magistrate judge's report and recommendation, the district judge makes a "de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). When only general objections are made to a magistrate judge's report and recommendation, the district judge reviews it for clear error or manifest injustice. *E.g.*, *Brown v. Peters*, 1997 WL 599355, at *2-3 (N.D.N.Y. Sept. 22, 1997), *aff'd*, 175 F.3d 1007 (2d Cir. 1999). After conducting the appropriate review, the district court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C).

Here, no objections to the R&R were filed, and so the Court has reviewed it for clear error. Having found none, the Court adopts Judge Roemer's findings and recommendations in their entirety. The petition has clearly been rendered moot by the vacatur of petitioner's conviction and his release from custody, and dismissal is therefore appropriate.

III. Conclusion

For the reasons set forth in Judge Roemer's thorough and well-reasoned R&R, the undersigned accepts all of his conclusions.

The R&R (Docket No. 52) is hereby adopted in its entirety, and the petition (Docket No. 1) is dismissed as moot. The Clerk of Court is directed to close this case.

ALL OF THE ABOVE IS SO ORDERED.

S/Michael A. Telesca

MICHAEL A. TELESKA
United States District Judge

Dated: September 7, 2017
Rochester, New York